THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 3645 of 2007

23-04-2007

Between:-

Bathini Rajalingam and another.

Petitioners

And

The Karimnagar Municipal Corporation,
Rep., by its Commissioner and two others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.3645 of 2007

Oral order:

The petitioners seek a declaration that the action of the first respondent in proposing to lay a road and drainage in land

ad-measuring Ac.0-17 1/4$^{th}$ gts in survey No. 406 of Kothirampur village, Karimnagar mandal and district without obtaining the petitioners' consent and without following the due process of law, is illegal and for an appropriate direction to the respondents to act in accordance with law.

The petitioners claim to be co-owners of the land in survey No. 406 of Kothirampur village. According to them, late B. Anjaiah during his lifetime was allotted certain joint family properties under a compromise decree dated 27-

06-1991 in a partition suit – O.S.No. 100 of 1990 – on the file of the Court of learned Subordinate Judge, City Civil Court, Karimnagar. While the properties allotted to late B. Anjaiah were spelt out in C and C1 of the compromise memo which according to the petitioners includes lands in survey Nos. 407, 397, 401 and 405 of Kothirampur village, the petitioners are stated to have been allotted properties in Schedule E and E1 of the compromise decree. The second respondent was the third defendant and third respondent herein, the plaintiff, in O.S.No. 100 of 1990. These persons were allotted certain properties under the compromise partition decree. According to the clause 6 of the compromise decree, the land ad-measuring Ac.0-17 1/4$^{th}$ guntas of land in survey No. 406 of Kothirampur village was left for the purpose of road jointly, towards the eastern side.

While so, it is alleged that respondent Nos. 2 and 3 had with a view to prevent the petitioners from using this private land in survey No. 406, applied to the first respondent requesting to lay a 50' road and drainage encompassing an extent of Ac.0-17 1/4$^{th}$ guntas of land in survey No. 406 of Kothirampur village. The petitioners claim to have submitted a representation to the first respondent claiming joint ownership of the property in question and informing the first respondent not to make any constructions or lay a road without taking the petitioners also into confidence and without their consent.

Nevertheless, as the respondents were allegedly proceeding to lay a road without the consent of the petitioners or without acquisition of the property in question, the writ petition is filed and appropriate relief is sought.

The respondent-Municipal Corporation has filed a counter affidavit. In paragraph Nos. 4 to 8, the Municipal Corporation pleads as under:

> *"4. It is respectfully submitted that in reply to para 3 of the affidavit, I submit that an extent of Ac.0.17 1/4$^{th}$ guntas land in Sy. No.406 is a part of road as per the decree in O.S.No. 100/1990 dt. 7.6.1991. There is an existing 40 feet Master Plan road vide G.O.Ms.No. 760, M.A. dt. 22.9.1982 and a 10 feet unformed drainage leading from Gidda Perumandlu Temple to Dr. Ambedkar Stadium. It is pertinent to mention here that as per the approved lay out of the then Rampur Grampanchayat the Sy.No. 406 was also shown and this 17 1/4$^{th}$ gunats were shown as a 40 feet road and the said 40 feet road is existing since long time and the people in that locality are using the same. The contention of the petitioners that the road is a private road is absolutely incorrect.*
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> *5. It is respectfully submitted that in reply to para 4 of the affidavit, I submit that the locality people of Kothirampur and respondents 2 and 3 gave a representation to this respondent along with a partition decree made in between petitioners and respondent No.2 and 3 to construct the drainage and road. In the said decree it is clearly mentioned that the land measuring 17 guntas out of Survey No.406 is left for the purpose of road jointly towards*

*eastern side. There is an existing unformed 10 feet drainage at the site in question which is flowing along 25, 26, 27 and 28 divisions of Karimnagar Municipal Corporation. This unformed drainage is causing much inconvenience to the public at large. The said road is a Master Plan road and the same is being used by the general public.*

*6. It is respectfully submitted that the allegation of the petitioner that 17 guntas of land in Sy.No. 406 is joint property is false. As per the partition decree the petitioner and respondent No. 2 and 3 are bound to leave the 17 guntas of land for the purpose of road. The said 17 guntas of land is adjacent to the respondent No.2's house and he also constructed a compound wall.*

*7. It is respectfully submitted that the said 17 ¼ guntas of land is a part of a 40 feet wide Master Plan road and on the said land an unformed drainage has been flowing since many years. It is false to say that this respondent is cutting the trees in the above said land. In fact, there are no trees in the flowing drainage. There is a huge demand from the locality people to construct a pucca drainage as entire bad drainage water from 25, 26, 27 and 28 divisions is being passed through this land. There is an urgent need to construct a drainage and form a 50 feet road as population in Karimnagar Municipal Corporation is increasing day by day. So there is a need to form 50 feet road including drainage. It is also submitted so far the Municipal Corporation has not commenced any work in the above said land.*

*8. It is respectfully submitted that the contention of the petitioners that the procedure u/s. 145 to 147 of H.M.C. 1955, has to be followed is absolutely incorrect as there is a Master Plan road and the lay*

*out approved by the then Rampur Gram Panchayat shown this piece of land as a 40 feet road. The petitioners without objecting for the Master Plan road approval which was approved way back in the year 1982, now they cannot claim this as their private land and the question of negotiations does not arise. In fact the petitioners are not having any title to the said property basing on the compromise decree passed in OS.No. 100/1990, dt. 7.6.1991, wherein it was clearly shown as 40 feet road."*

From the aforesaid pleadings of the respondent-Corporation, it is apparent that the Corporation alleges that the property of

Ac.0-17 1/4$^{th}$ guntas in survey No. 406 of Kothirampur village is public property earlier belonging to the Grampanchayat and now the property of the Municipal Corporation. The respondent-Corporation disclaims any entitlement of the petitioners to the property.

In the aforesaid circumstances and having regard to the competing pleadings, there is a clear dispute of title as to the property in survey No. 406 of Kothirampur village. Such disputes of title ought not to be determined under Article 226 of the Constitution of India. Such disputes are more appropriately determined before the Civil Court of competent jurisdiction in a suit for declaratory relief. Having regard to the assertion of a title adverse to the petitioners by the respondent-Municipal Corporation, the appropriate remedy for the petitioners is to seek appropriate relief before the Civil Court of competent

jurisdiction.

On the aforesaid analysis, the writ petition is dismissed. The petitioners are at liberty to seek appropriate relief before the appropriate forum. No costs.

The interim order dated 26-02-2007 granted by this Court shall stand dissolved.

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GODA RAGHURAM, J

Dated:23-04-2007
Pvks/*

Nb:- Furnish c.c. in three days.
B/o pvks/*